



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN SUPPORT OF:

H.B. NO. 6698: AN ACT CONCERNING GRAND JURY REFORM

JOINT COMMITTEE ON JUDICIARY
April 15, 2013

The Division of Criminal Justice respectfully requests and recommends the Committee's JOINT FAVORABLE REPORT for H.B. No. 6698, An Act Concerning Grand Jury Reform. This legislation is the first priority of the Division in our 2013 Legislative Recommendations to the General Assembly. The bill proposes comprehensive reform of the investigatory grand jury system to strengthen the ability of Connecticut law enforcement to investigate and prosecute serious criminal activity in this state and to bring relief to crime victims and grieving families.

Each state has some form of grand jury system. No state, however, restricts a prosecutor's ability to empanel a grand jury to the degree that Connecticut currently law does. General Statutes § 54-47c imposes multiple requirements far beyond those of any other state, depriving state prosecutors of the tools readily available in every other jurisdiction.

Approximately one-half of the states have a grand jury system that largely mirrors that of the federal government, whereby citizen grand juries are regularly empanelled for the purpose of considering criminal charges and investigating crime. These grand juries generally have two functions: (1) to determine whether probable cause exists to charge an individual with a criminal offense, and (2) to investigate crimes. The grand jury is empowered to take testimony under oath and to issue subpoenas for testimony and documents, as is the case in the federal government. In the federal system, and in many states, the prosecutor may use the grand jury's authority to subpoena witness testimony and documents based on the prosecutor's determination that an investigation is appropriate.

The remaining states have some form of special grand jury procedure, either in addition to – or in lieu of – regular citizen grand juries. In many of those states, these "special" grand juries have statewide or multijurisdictional authority, usually upon application of the attorney general or another prosecutor. Examples of states that have such provisions include Arizona, Colorado, Florida, Massachusetts, Mississippi, Rhode Island, and others. In many of these jurisdictions the prosecutor also need make no preliminary showing before using the tools of the grand jury to investigate a crime. In others, the requirements are minimal, often requiring nothing more than the prosecutor's averment that the grand jury will assist in investigating a crime.

By contrast, Connecticut's grand jury statute requires "a full and complete statement of the facts and circumstances relied upon by the applicant to justify his reasonable belief that the investigation will lead to a finding of probable cause," C.G.S. § 54-47c(b); a "full and complete statement of the status of the investigation and of the evidence collected as of the date of the application;" C.G.S. § 54-47c(c)(1); and – most significantly – a "full and complete statement specifying the other normal investigative procedures that have been tried and the reasons such procedures have failed." The panel of judges may approve the application for a grand jury only if it finds (1) that the administration of justice requires an investigation to determine whether or not there is probable cause to believe that a crime has been committed (emphasis added), (2) that other normal investigative procedures have failed or reasonably appear unlikely to succeed, and (3) that the grand jury's investigative procedures "appear likely to succeed in determining whether or not there is probable cause to believe that a crime or crimes have been committed." Simply put, no other state requires the sort of preliminary showing that Connecticut law currently places upon prosecutors in order to establish a grand jury.

Our current grand jury system simply is ineffective to combat crime – particularly violent crimes – because of these time-consuming and often-insurmountable hurdles, particularly that which requires an explanation that other investigative means have been exhausted or will prove insufficient. Prosecutors and investigators must devote precious time and effort to satisfy this requirement when they could more productively be using the grand jury tools to solve the crime, as is done nearly everywhere else. Too many cases go unsolved after investigations reach a dead end. There are currently more than 1,000 unsolved homicides in the state. In some cases the cooperation of only a few witnesses or the production of a small number of documents might break the case, bring a murderer to justice, and provide some solace and relief to a grieving family. It is time to bring to Connecticut a useful investigatory grand jury system that will give law enforcement the ability to investigate and solve these cases and serve the interests of justice.

H.B. No. 6698 would streamline the process to allow for the more efficient administration of justice and investigation of serious crimes while carefully safeguarding the rights and privileges of suspects and witnesses. The grand jury has historically been utilized more often by the Office of the Chief State's Attorney and its specialized prosecutorial units than by the individual State's Attorney's offices, largely because of the drain on resources that the process involves. H.B. No. 6698 would allow each State's Attorney to apply to the Presiding Judge of the Judicial District for the empanelment of a one-judge grand jury. The Presiding Judge could authorize a grand jury based on his or her finding that the interests of justice require the use of a grand jury to investigate the particular crime in question. The State's Attorney could thereby more effectively investigate violent crimes in that Judicial District by using the grand jury's powers before the investigation grows cold. While the preliminary showing required for the establishment would be reduced, the statutory protections for witnesses would be greatly increased. The grand juror, instead of conducting the investigation, would perform a true judicial function by standing between the prosecutor and the public to ensure that the rights of all witnesses and suspects are protected. No subpoena may be issued without the judge's approval and each subpoena must be served 72 hours before the time of appearance and must contain a notice advising the witness whether the person subpoenaed is a target of the investigation, of the right to counsel and of the right not to be compelled to incriminate himself or herself. The bill also provides for other statutory protections for witnesses several of which have been recommended by defense attorneys who did provide input over past years.

The reforms proposed in H.B. No. 6698 would still leave law enforcement in the State of Connecticut a far cry from the investigative tools and authority provided to our federal counterparts and those in most other states. (In fact, law enforcement and, in particular the Division of Criminal Justice, is one of the few entities in Connecticut state government with no investigative subpoena authority. More than sixty Connecticut state agencies dealing with a host of non-criminal matters already have some form of subpoena authority.) As noted, in the federal criminal justice system and most other states, prosecutors work with sitting grand juries to investigate allegations of criminal activity. The ability to quickly subpoena documents and testimony is invaluable in trying to solve crimes where witnesses are unwilling to cooperate and documents cannot be obtained without some form of legal process. By contrast, our police departments and prosecutors are left to rely on consent or the use of search warrants to obtain documents, and have no means to obtain sworn testimony. While the search warrant can be an effective tool for obtaining evidence, it requires a showing of probable cause to believe that a crime has been committed before the warrant may issue. In many cases and particularly with regard to complex economic crime, the need to show probable cause before the prosecutor can obtain the very documents that may establish that fact often proves insurmountable.

As we have noted in the past, the Division fully recognizes that any expansion of law enforcement authority can raise understandable concerns about civil liberties and privacy. With this in mind the Division has solicited and welcomed the input and concerns of the defense bar, the Judicial Branch and others as we have worked to draft these critically needed reforms. The bill before the Committee today is the product of many hours of thoughtful work and deliberation and the lack of input from any particular party is not for lack of our asking for such input. The bill includes substantial and sufficient "checks and balances," as well as specific provisions designed to protect the rights of potential targets and witnesses in the grand jury process. The Division of Criminal Justice would respectfully request the Committee's JOINT FAVORABLE REPORT. We thank the Committee for its consideration of this important legislation. We would be happy to provide whatever additional information the Committee might require or to answer any questions that you might have. Thank you again.

